

CARL EDWARD HOFFMAN
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Vista, CA. 92081
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FILED

2008 AUG 29 PM 4:15

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PLAINTIFF IN PRO PER

BY  DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

'08 CV 1597 JM NLS

CARL EDWARD HOFFMAN, an individual,)

Case No.:

Plaintiff,)

PLAINTIFF CARL EDWARD
HOFFMAN'S COMPLAINT FOR
PATENT INFRINGEMENT

vs.)

IMPACT CONFECTIONS, INC., a Colorado)

Corporation; and DOES 1 through 100,)

DEMAND FOR JURY TRIAL

inclusive,)

Defendant

I, CARL EDWARD HOFFMAN (hereinafter, "Mr. Hoffman") hereby allege as and for this complaint against defendants IMPACT CONFECTIONS, INC. (hereinafter, "Impact") and DOES 1 through 100 (hereinafter collectively with Impact, "Defendants" and, each, individually, a "defendant") as follows:

THE PARTIES

1. At all times relevant to the matters set forth and alleged in this complaint, Mr. Hoffman was and is a resident of the State of California, County of San Diego.

1 2. Mr. Hoffman is informed and believes, and thereon alleges, that Impact is a
2 Colorado Corporation having its' principal place of business at 888 Garden of the Gods Road,
3 Colorado Springs, Colorado, 80907.

4 3. Mr. Hoffman is further informed and believes, and thereon alleges, that Impact's
5 gross sales were approximately \$32 million in 2001, \$28 million in 2002, and \$30 million in
6 2003.

7 4. Mr. Hoffman is informed and believes, and thereon alleges, that Impact's
8 customers include Wal-Mart Stores, Inc., Target Corporation, K-Mart, Longs Drugs Corporation,
9 Albertsons, Inc., Circle K Stores, Inc., 7-Eleven Corporation, KB Toys, and Costco Wholesale
10 Corporation.

11 5. The true names and capacities of the defendants sued herein as DOES 1 through
12 100, inclusive, are unknown to Mr. Hoffman, who therefore sues said defendants by such
13 fictitious names. Mr. Hoffman will amend this complaint to allege the true name and capacity of
14 each such DOE defendant when the same is ascertained.

15 6. Mr. Hoffman is informed and believes, and thereon alleges, that, at all times
16 relevant hereto, each of the Defendants was acting in concert and active participation with each
17 of the other Defendants in committing the wrongful acts herein alleged and each of the
18 Defendants was the agent of each of the other Defendants, and, in doing the things herein
19 alleged, each of the Defendants was acting in the course and scope of his, her, or its' agency and
20 was subject to and under the supervision of, and was acting with the knowledge of, his, her or
21 its' co-defendants.

22 7. On information and belief, each of the DOE Defendants is either an alter ego of
23 Impact, possesses the right and/or ability to supervise the relevant production, financial affairs,
24 marketing, and/or sales of Impact, has obvious and direct financial interest in such conduct, has
25 engaged in conduct that forms part of or furthers the claims for relief alleged in this complaint,
26 and/or by virtue of machinery, financial aid, or goods contributed provides the means to the
27 asserted claims for relief. Each of the Defendants is therefore also liable under theories of
28 vicarious liability, direct infringement, contributory infringement, and/or inducing infringement.

JURISDICTION AND VENUE

8. This is a civil action for patent infringement, injunctive relief, and damages arising under the United States Patent Act, 35 U.S.C. §§ 1, et seq. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. §§ 1331, and 1338(a).

9. Venue lies in this district pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1400(b), insofar as a substantial part of the events and omissions giving rise to the claims herein asserted occurred within the jurisdiction of this District.

FACTUAL BACKGROUND

10. In the first quarter of 2003, Mr. Hoffman, while working as CEO and President of Ollie Pop Bubble Gum Corporation, began to develop a new concept for producing and marketing novelty gum and candy designed to appeal to the fans of the National Association for Stock Car Auto Racing ("NASCAR").

11. Mr. Hoffman contemplated two different packages, both of which would be sold under the mark PIT CREW CHEW. The first was a pouch containing gum or candy. The second was a plastic container shaped like a tire and wheel that was to contain gum or candy. The products were to be licensed by NASCAR and bear NASCAR's logos. Additionally, the products were to be endorsed by at least one NASCAR driver and would display the driver's image and/or his/her car and/or associated number.

12. Mr. Hoffman designed both packages and began working with Motorsports Management, Inc. ("Motorsports Management") to establish a relationship between Ollie Pop Corporation and NASCAR.

13. On or about March 11, 2003, Mr. Hoffman contacted Impact to explore the idea of forming a mutually beneficial relationship to produce, market and distribute PIT CREW

1 CHEW products. On May 12, 2003, Impact and Ollie Pop Corporation entered into a written
2 non-disclosure agreement.

3 14. Mr. Hoffman relied on Impact to conduct itself in an honest and forthright manner
4 and adhere to the confidentiality and non-compete restrictions in the non-disclosure agreement.
5 Therefore, as part of his discussions with Impact, Mr. Hoffman disclosed confidential
6 information to Impact which included, but was not limited to, design ideas for the plastic wheel
7 container.

8 15. As the development of the product progressed, negotiations between the two
9 companies progressed as well. Impact, however, began to "squeeze" the monetary details of the
10 relationship in a blatant attempt to decidedly and unfairly skew the deal in it's' favor. Impact
11 began to demean the contributions of Ollie Pop Corporation and the necessity of it's'
12 involvement. Impact went so far as to state "We don't really even need Ollie Pop".

13 16. In November of 2003, Mr. Hoffman resigned from Ollie Pop Corporation. In
14 September, 2004, Mr. Hoffman and Ollie Pop Corporation entered into an agreement in which
15 Mr. Hoffman would trade his considerable amount of interest in Ollie Pop Corporation for all
16 right, title and interest in and to and all intellectual property rights related to the PIT CREW
17 CHEW mark and products, any and all rights of Ollie Pop Corporation under the non-disclosure
18 agreement and/or any implied agreement, all patent and copyright rights relating to the tire and
19 wheel design and artwork, and all choses in action as against the Defendants pertaining to PIT
20 CREW CHEW and/or the tire and wheel design and/or the artwork thereon.

21 17. Mr. Hoffman finalized the design for the wheel container he intended to use for
22 the PIT CREW CHEW product, and filed a Design Patent application on July 8, 2005.

23 18. In 2005, Mr. Hoffman learned that Impact had disregarded the restrictions of the
24 non-disclosure agreement he now owned the rights to, and misappropriated all the confidential
25 and proprietary information disclosed in confidence and good faith by Mr. Hoffman and
26 launched its' "own" product – Champion Chew.

27 19. Impacts' "Champion Chew" product was a gum enclosed in a plastic tire and
28 wheel container as disclosed to Impact by Mr. Hoffman. The wheel container is a direct, blatant

1 and intentional copy of the wheel container design Mr. Hoffman disclosed to Impact in
2 confidence and good faith, under the protection of the non-disclosure agreement.

3 20. Mr. Hoffman's Design Patent was approved and granted on November 27, 2007
4 as U.S. Design Patent # US D556,052 S. The wheel container produced by Impact is a direct and
5 intentional infringement of this Design Patent owned by Mr. Hoffman.

6
7 **CLAIM FOR PATENT INFRINGEMENT**
8

9 21. Mr. Hoffman repeats and realleges each and every allegation set forth in
10 paragraphs 1- 20 above as though fully set forth herein.

11 22. Upon information and belief, defendants, and each of them, have infringed,
12 induced infringement of and contributorily infringed the patent-in-suit by making, using, selling,
13 offering for sale, contributing to the use of by others, and/or inducing others to use products that
14 infringe on Mr. Hoffman's Patent.

15 23. Upon information and belief, defendant's infringement is willful and deliberate.

16 24. As a direct and proximate consequence of defendants infringement, Mr. Hoffman
17 has suffered and will continue to suffer irreparable injury and damages in an amount not yet
18 determined for which Mr. Hoffman is entitled to relief.

19
20 **PRAYER FOR RELIEF**
21

22 WHEREFORE, Mr. Hoffman hereby respectfully prays for relief as against defendants,
23 and each of them, as follows:

24 A. That Defendants, and each of them, be held to have infringed on U.S. Patent #
25 D556, 052 S, owned by Mr. Hoffman.

26 B. For general, actual, and statutory damages in accordance with proof at trial;

27 C. for preliminary and permanent injunctive relief;
28

1 D. for an accounting and restitution and/or disgorgement of any and all unlawful
2 profits, payments, revenues, monies, and/or royalties derived and/or obtained by Defendants, and
3 each of them, whether from domestic or foreign source, in accordance with proof at trial;

4 E. for an accounting and restitution and/or disgorgement of any and all benefits not
5 encompassed in the preceding paragraph which have been or will be derived or obtained by
6 Defendants, and each of them, pertaining to or as a direct or indirect result of the conduct
7 complained of herein, whether from domestic or foreign sources, in accordance with proof at
8 trial;

9 F. for costs to Mr. Hoffman for ameliorative or corrective advertising to restore Mr.
10 Hoffman to the position he would have occupied absent Defendant's unlawful actions;

11 G. for exemplary and/or punitive damages in an amount sufficient to punish
12 Defendants, and each of them, and deter such misconduct in the future, in accordance with proof
13 at trial;

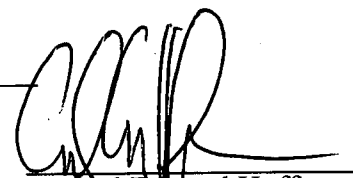
14 H. for a constructive trust in accordance with proof at trial;

15 I. for costs of suit;

16 J. for reasonable attorneys fees; and

17 K. for any such other and further relief as the court may deem just and proper.

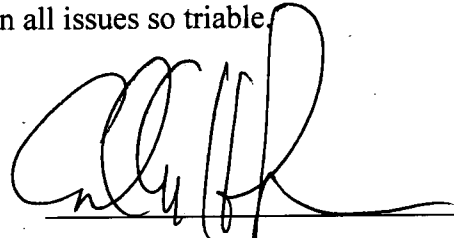
18
19
20 Dated: August 29, 2008

21 _____
22
23 
24 Carl Edward Hoffman
25 Plaintiff in Pro Per
26
27
28

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, **CARL EDWARD**
HOFFMAN hereby respectfully demands a trial by jury on all issues so triable.

Dated: August 29, 2008

A handwritten signature in black ink, appearing to read 'Carl Hoffman', written over a horizontal line.

Carl Edward Hoffman
Plaintiff in Pro Per

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Carl Edward Hoffman (in Pro Per)
1519 Madrid Dr., Vista, CA. 92081

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

DEFENDANTS **FILED**

Impact Confections, Inc.

2008 AUG 29 PM 4:17

County of Residence of First Listed Defendant

CLERK OF COURT (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) DEPUTY

08 CV 1597 JM NLS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Overpayment of Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):

United States Patent Act, 35 U.S.C. §§ 1, et seq.

Brief description of cause:

Patent Infringement

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Hon. Barry T. Moskowitz

DOCKET NUMBER 06 CV 0489BTM NLS

DATE

08/29/2008

SIGNATURE OF ATTORNEY OF RECORD

IN PRO PER

FOR OFFICE USE ONLY

RECEIPT #

154579

AMOUNT

\$350

APPLYING IFP

JUDGE

MAG. JUDGE

LAC 8/29/08

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

154579 - TC

**August 29, 2008
16:17:22**

Civ Fil Non-Pris

USAU #: 08CV1597

Judge.: JEFFREY T MILLER

Amount.: \$350.00 CK

Check#: PC3193

Total-> \$350.00

FROM: CARL EDWARD HOFFMAN
VS
IMPACT CONFECTIONS